REMARKS

Prior to entry of this Amendment, claims 1-12 are pending. By the Amendment herewith, Applicant cancels claims 10-11 without prejudice. New claims 13-14, corresponding to claims 7 and 8, but with dependency on claim 5, are added.

The claims are amended to recite an "apparatus," and the independent claims also are further amended to recite a controller, a memory and a computer program. Support for the amendments exists in the specification at, for example, page 9, lines 8-9.

Claim 3 also is amended to remove the "substantially" term, in response to the Examiner's rejection set forth in paragraph 4, page 4 of the Action.

In claim 5, the terms "at a similar level to" are changed to "the same as," in response to the Examiner's rejection set forth in paragraph 3, page 4 of the Action.

Applicant also has deleted the phrase "operable to" from the claims, rendering moot the Examiner's rejection set forth in paragraph 2, page 2 of the Action. The term "configured to" is thus added, where appropriate.

No new matter is introduced into the application as a result of the foregoing clarifications to the claims.

Referring now to the specific objections and rejections set forth in the Action, the specification is objected to as failing to provide antecedent basis for the subject matter of claim 3.

Applicant respectfully traverses the above objection to the specification. However, it is respectfully asserted that the objection is now moot in view of the clarification made to claim 3. Amended claim 3 is supported by the specification at, for example, page 14, lines 13-14.

Examples are provided in Tables 2-6, which are set forth at pages 15-17 of the specification. Accordingly, reconsideration and withdrawal of the objection to the specification is warranted.

Claims 1, 3 and 5 are then rejected under 35 USC Section 112, second paragraph, as being indefinite. Applicant respectfully traverses this rejection. However, in view of the clarifications to claims 1, 3 and 5, noted above, reconsideration and withdrawal of this rejection is warranted.

Regarding the rejections based upon art, claims 1, 2 and 4-12 are rejected under 35 USC Section 102(e) as being anticipated by Hwang (US Patent Publication No. 2003/0072290A1, hereinafter "Hwang").

The foregoing rejection is respectfully disagreed with, and is traversed below.

It is respectfully noted that Applicant's independent claims 1 and 5 are amended to, for example, recite a first number of bits of code used in a full-rate channel mode being greater than a second number of bits of code used in a second channel mode, having a lower data transmission rate than the full-rate channel mode.

Hwang does not disclose or suggest the subject matter recited in Applicant's independent claims 1 or 5 for at least the following reasons

Hwang relates to mapping TFCI symbols in a transmission apparatus. More particularly, Hwang concerns mapping TFCI for two channels (DCH and DSCH) (see, e.g., paragraph 67 of Hwang). When both DCH (dedicated channel) and DSCH (dedicated shared channel) are used for transmission, two transport format combination indicators are needed to indicate the transport format combination for DCH and DSCH separately. Thus, some bits indicate the transport format combination for DCH, and other bits indicate the transport format combination for DSCH.

Hwang further proposes that one TFCI field is split into two parts - one part is used for transmission of TFCI for DCH and the other part is used for transmission of TFCI for DSCH.

The relevant bit ratio is the ratio of TFCI bits for DCH to the ratio of TFCI bits for DSCH. Hwang aims to keep the same bit ratio between DCH and DSCH before TFCI coding and after TFCI coding, i.e. (TFCI bits for DCH:TFCI bits for DSCH) before TFCI coding = (TFCI bits for DCH:TFCI bits for DSCH) after TFCI coding (see, e.g., paragraphs 69-70 of Hwang).

Thus, Hwang does not disclose or suggest, for example, using a number of bits of TFC code in a full-rate mode that is different from a number of bits of TFC code in a second mode having a different data transmission rate to the full-rate mode.

As such, Hwang does not disclose or suggest the recited feature of claim 1 "to include in a radio packet when operating in [a] second mode a part of one of said codes, wherein said part of one of said codes comprises a second number of bits, wherein the second number of bits is less than the first number of bits, and to refrain from transmitting bits of the code other than the first number of bits comprising said part of one of said codes."

Additionally, Hwang does not disclose or suggest the recited feature of claim 5 "to include in a radio packet when operating in said second mode a second number of bits of coded transport format combination data, the second number of bits of coded transport format combination data being less than the first number of bits of coded transport format combination data."

Still further, Hwang does not disclose or suggest the recited feature of claim 5 "the second number of bits of coded transport format combination data gives rise to a second ratio of a performance of the coding of the transport format combination data to a performance of the coded contents data, wherein said first ratio of performance of the coding of the transport format combination data to performance of the coded contents data is the same as the second ratio of performance of the coding of the transport format combination data to performance of the coded contents data."

Nor is there any reason to modify the teachings of Hwang in an attempt to arrive at Applicant's claimed subject matter.

Accordingly, it is respectfully asserted that neither claim 1 nor claim 5 is anticipated, or rendered obvious, by the teachings of Hwang.

Thus, independent claims 1 and 5 are patentable in view of the cited art and should be allowed. Similarly, all remaining dependent claims, including newly added claims 13-14, also should be allowed at least in view of their dependency from an allowable independent claim.

All issues having been addressed, the subject application is believed to be in condition for immediate allowance. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the outstanding objection and rejections. A Notice of Allowance is therefore earnestly solicited.

Should the Examiner have any questions, a call to the undersigned attorney would be appreciated.

Respectfully submitted:

Christine Wilkes Beninati — June 4, 2009

Christine Wilkes Beninati — Date

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